IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No.16634 of 2004

Between:

V.Ch.V.Appa Rao S/o.V.Srinivasa Rao
B-307, Sumitra Apartments Tirumalagiri, Secunderabad.

..... PETITIONER

AND

1 State Bank of India represented by its Asst.General Manager
(Region-II), Zonal Office Patny Circle, Secunderabad 500003
2 Chief Manager (CS and Enquiry Officer) State Bank of India
(Region-IV), Zonal Office Patny Circle, Secunderabad 500003

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an order direction or writ particularly one in the nature of writ mandamus or any other appropriate writ declaring to proceed with the departmental Enquiry in pursuance of the memorandum of charge sheet No.DPS/ZO/HYD/195 dated 8.6.2001 pending criminal Trial in c.c.No.370/2001 is wholly illegal and contrary to settlement and consequently restrain the respondents from proceeding with the Departmental Enquiry till the conclusion in Criminal case in C.c.No.370/2001 on the file of Judicial First Class Magistrate, Jeedimetla.

Counsel for the Petitioner:MR.G.VIDYASAGAR

Counsel for the Respondents: Mr.K.Madan Mohan Rao

The Court made the following :

ORDER:

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This writ petition is filed challenging the action of the respondents in proceeding with

the departmental enquiry against the petitioner in pursuance of the Memorandum of Charge Sheet No.DPS/ZO/HYD/195 dated 08.06.2001 pending trial in C.C.No.370 of 2001 on the file of the Judicial First Class Magistrate, Jeedimetla.

The brief facts that are necessary for disposal of this writ petition are as under:

The petitioner was initially appointed as a clerk in respondent-Bank on 01.06.1984 and later promoted as Computer Operator in December 1996 and posted to Jeedimetla Branch. While so, the petitioner was placed under suspension by the first respondent on 02.02.2000 on the ground of misappropriation and misutilisation of NLC accounts and he was also issued a Memo dated 04.02.2000 calling for explanation. Thereafter, a police complaint was lodged by the respondents on 05.08.2000, which was registered as crime No.260 of 2000 by the Station House Officer, Jeedimetla Police Station for the offence punishable under sections 420 and 468 IPC. The police filed a charge sheet in the said Crime which was numbered as C.C.No. 370 of 2001 on the file of the Judicial I Class Magistrate, Jeedimetla and the same is at the stage of trial.

In addition to that, the respondents have also issued a charge sheet vide proceedings No.DPS/20/HYD/195 dated 08.07.2001 alleging misconduct on the very same set of allegations, which were alleged in C.C.No. 370 of 2001. The petitioner has submitted an explanation thereof. The second respondent was appointed as an Enquiry Officer and the enquiry proceedings are under process.

On 10.04.2002, the employees working in various Banks and the Managements of 52 “A” Class Banks have entered into bipartite settlement in terms of Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 with regard to disciplinary action against the employees of the Banks and the procedure thereof. The respondent-bank is also one of the party to the said settlement. As per Clause 4 of the said settlement, wherever an employee is being subjected to prosecution in a Court of law and where he is not put on trial within a period of one year of commission of offence, it is open to the Management to proceed with departmental enquiry. As per clause 4(i) of the said settlement, where the ingredients of the charges in the departmental enquiry are similar to the charges framed in the criminal case, the disciplinary proceedings in respect of those charges are to be held back.

The grievance of the petitioner is that majority of charges mentioned in the charge sheet dated 08.07.2001 issued by the disciplinary authority are identical to the charges framed in C.C.No. 370 of 2001. The respondent-bank is bound by the conditions in the said settlement and it cannot proceed with the departmental enquiry pending the criminal proceedings. Hence, the departmental proceedings have to be stalled till the conclusion of the criminal case.

The Assistant General Manager of the respondent-Bank has filed a counter-affidavit on behalf of the respondents. It is stated that the petitioner was placed under suspension from 04.02.2000, pending initiation of disciplinary action on certain serious acts of misconduct. As one of the irregularities committed by the petitioner involved forgery and fabrication, the respondent-Bank lodged a police complaint on 05.08.2000 with the Jeedimetla police. As per the policy of the Bank, whenever acts involve offences under IPC, it is necessary to lodge a police complaint. The complaint is lodged only for the offences committed against the State and it has nothing to do with the initiation of disciplinary action for misconduct under the service rules. The respondent bank issued a charge sheet in the departmental proceedings on 08.06.2001 for the irregularities committed by the petitioner. According to the Bipartite Settlement, the management shall not proceed with the disciplinary enquiry for a period of one year, where the charges in both the disciplinary proceedings and criminal case are one and the same. As the criminal case has not been concluded for three years, the respondent proceeded with the disciplinary proceedings. At any rate, the charges in the criminal case and the disciplinary proceedings are not one and the same. Further, the Special Chapter on Vigilance Management in Public Sector Banks, as ratified by the Central Vigilance Commission Act, 2003, provides that no bipartite agreement should stand in the way of disciplinary action continuing parallel with criminal investigation/trial for the purpose of speedy disposal of vigilance cases. Hence, the respondents pray to dismiss the writ petition.

Learned counsel for the petitioner contended that the charges against the petitioner in the departmental proceedings as well as the criminal case are based upon same set of allegations and the evidence to be adduced in both the cases are one and the same and, if the departmental enquiry is proceeded further, it will cause prejudice to the petitioner. Therefore, he prays to stall the departmental proceedings till the conclusion of the criminal case.

On the other hand, learned standing counsel appearing for the respondents contended that the charges in the departmental proceedings and the criminal case are undoubtedly out of the same incident. He further contended that though some of the charges are overlapping, they are not one and the same and the evidence to be adduced in both the cases is not one and the same. Therefore, there is no need to stop the departmental proceedings. He relied upon a decision in **Kendriya Vidyalaya Sangathan and others Vs. T.Srinivas**.

Basing on the report given by one Sri.S.Sambasiva Rao, Chief Manager of the State Bank of India, Jeedimetla, the police registered a case in Crime No. 260 of 2000. After completion of investigation, a charge sheet is filed before the Judicial First Class Magistrate, Medchal under Sections 420 and 468 IPC.

The sum and substance of the charge sheet allegations are that the petitioner has prepared fictitious documents and term deposit receipts and put the signature of the Manager and the Deputy Manager of State Bank of India, Hyderabad and submitted the same to the State Bank of India, Jeedimetla, and accordingly availed the loan of Rs.6,00,000/-. Thereby the petitioner has cheated the Bank and misappropriated the amount. The respondent-Bank issued a charge sheet dated 08.06.2001 calling for an explanation from the petitioner.

As seen from the charge sheet issued by the disciplinary authority dated 08.06.2001, as many as 8(a) to 8(t) charges were framed. No doubt, as rightly contended by the learned counsel for the petitioner some of the charges are overlapping and one and the same in both the departmental proceedings as well as the criminal case except the charges with regard to special term deposit receipts and over draft facilities. The petitioner has not filed any document to show that the evidence to be adduced in both the departmental proceedings as well as the criminal case is one and the same. The law is well settled that unless it is shown that the charges levelled against the delinquent and the evidence to be adduced in both the departmental proceedings as well as the police are one and the same, normally the interdiction of departmental proceedings cannot be made.

Para 9 of the judgment in the case referred to above may be extracted hereunder:

> "A reading of M.Paul Anthony's case (supra) it is noted that there is consensus of judicial opinion on the basic principle that

> proceedings in a criminal case and departmental proceedings can go on simultaneously, however this Court noticed that certain exceptions have been carved out to the said basic principle.

The exceptions referred to in the above decision are only applicable if the evidence to be adduced in both the cases is one and the same and the charges in both the cases are also one and the same. The charges in the criminal case are with regard to preparation of fictitious documents and term deposit receipts and availment of loan of Rs.6,00,000/-, which are punishable under Sections 420 and 468 IPC. For each individual item a separate charge has been framed against the petitioner in the departmental proceedings. So the charges are not one and the same in both the cases though some of the charges overlapped with each other. No material is placed before this Court to show that the evidence to be adduced in both the cases is one and the same. Therefore, as the petitioner *prima facie* failed to show that the charges framed against the petitioner and the evidence to be adduced in both the cases are one and the same; the departmental proceedings cannot be interdicted.

Learned counsel for the petitioner places reliance on the bipartite settlement between the employees of the Bank and the Bank dated 01.10.2003, whereunder it was agreed that if the charges contained in the departmental proceedings are similar to the charges framed in the criminal case, the departmental proceedings can be held back till the proceedings in the criminal case are concluded.

It is not mandatory for the disciplinary authority to stall the departmental proceedings. It is at the discretion of the disciplinary authority to take appropriate decision with regard to deletion of some charges, which are identical in the criminal case till the proceedings in the criminal case are concluded. So, on that ground, the departmental proceedings cannot be stalled.

The writ petition is devoid of merits and the same is accordingly dismissed. No costs.

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27.06.2005

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To

1 The Asst.General Manager, State Bank of India, (Region-II),
Zonal Office Patny Circle, Secunderabad 500003
2 The Chief Manager (CS and Enquiry Officer) State Bank of India
(Region-IV), Zonal Office Patny Circle, Secunderabad 500003

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